IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7451 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANOJ @ DADU BALDEVKAHAR

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 7451 of 2002

MS BANNA S DUTTA for Petitioner No. 1

MR ANIL S DAVE for Petitioner No. 1

MR VM PANCHOLI, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 06/03/2003

ORAL JUDGEMENT

#. By filing this petition, the petitioner-detenu has

challenged his detention order dated 15.7.2002. By the impugned order, the petitioner-detenu is detained in exercise of the powers under section 3(2) of the Gujarat Prevention of Antisocial Activities Act,1985 (hereinafter referred to as "the PASA" for short), as, the detaining authority found that the detenu is a "dangerous person" and is required to be detained under the preventive detention, so that, he may not continue with such type of dangerous activities.

#. Along with the detention order, the detenu was also served with the grounds of detention of the same date. In the said grounds, there is a reference about four criminal cases, which are pending against the petitioner. It is alleged against the petitioner that the petitioner is a communal minded person and is forming a gang and he is moving with the sword, stick etc. In all the aforesaid cases, the petitioner is released on bail. In the said grounds, there is a reference about statements of two witnesses, who have stated about the alleged activities of the petitioner. The authority, after having been satisfied about illegal activities of the petitioner, has detained him by way of preventive detention.

#. At the time of hearing of this petition, it is argued by the learned advocate for the petitioner that, the last case registered against the petitioner is dated 31.5.2002, i.e. the case at serial No.3 in the compilation, yet the detention order is passed as late as on 15.7.2002. It is submitted that, if, really illegal activities of the petitioner are required to be curbed, it was not necessary to wait for more than 1 and 1/2 months for passing the detention order. For that purpose, learned advocate has relied upon the decision of this Court in Special Civil Application No.5321 of 2002 dated 29.8.2002, wherein this Court (Coram: R.P.Dholakia, J) has observed in paras 2, 3 and 4, which read as under.

> "2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he/she cannot be detained under the Act. Reliance is placed on a decision in the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.
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> 3. I have heard learned advocate for the petitioner and also perused the material on

record. According to learned advocate for the petitioner, the detaining authority has passed the detention order relying upon the five offences registered against the detenu under the Prohibition Act. The last offence is registered before the Chawk Bazar Police Station vide Crime Register No.III-71 of 2002 for the offences punishable under Sections 66(1)(B) and 65(E) and 81 of Bombay Prohibition Act, which has been registered on 28.3.2002 and the detaining authority has passed the detention order on 30.4.2002. Thus, there is a delay in passing the detention order. No affidavit explaining the delay has been filed either by the detaining authority or by the State. The learned advocate for the petitioner has relied upon a judgment delivered by this Court reported in 1997 (1) G.L.H. page 381 in the case of Elesh Nandubhai Patel Vs. Commissioner of Police, Ahmedabad City and Ors. more particularly at para 21 which reads as under.:

"There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Praksh v. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S.Ramamurthy reported in 1993 (2) Suppli, SCC 61."

4. It appears that the last offence is registered against the detenu on 28.3.2002 and the order of detention has been passed on 30.4.2002 and hence, there is a delay in passing the order of detention. No affidavit has been filed either by the detaining authority or by the State explaining satisfactorily the delay caused in passing the order of detention. Therefore, in view of the above judgment relied upon by the learned advocate for the petitioner, the order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points."

This ground of delay has been taken by way of amendment, which is granted by this Court yesterday and in order to facilitate the learned Assistant Government Pleader to take instruction in the matter, the matter was kept today. Mr.Pancholi, learned AGP, submitted that, it is, no doubt, true that the last offence registered against the petitioner is dated 31.5.2002, however, the statements of the witnesses were subsequently recorded, and, therefore, according to him, delay can be said to have been explained by the State. However, the learned advocate for the petitioner has also relied upon the decision in the case of Elesh Nandubhai Patel Vs. Commissioner of Police, Ahmedabad City and others, reported in 1997 (1) GLH 381 wherein the Court in para 21 observed as under.:

> "In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996, i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority has relied on two incidents of 2nd October and 10th October 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Praksh v. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S.Ramamurthy reported in 1993 (2) Suppli, SCC 61."

#. Considering the aforesaid aspect of the matter and considering the fact that when the petitioner was already subjected to the criminal cases, it was not necessary to wait for recording the statements of the witnesses, as,

even four criminal cases mentioned above are sufficient to detain the petitioner by way of preventive detention, because, looking to facts of the said cases, it is clear that the petitioner is a dangerous person. In that view of the matter and in view of the judgments referred to above, the order of detention is required to be quashed and set aside.

#. In view of what is stated above, the petition is allowed. The order of detention dated 15.7.2002 is quashed and set aside. The detenu Manoj @ Dadu Baldev Kahar is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly.

(P.B.Majmudar,J)

(pathan)